

SECA Exparte discussion with the FCC 4/24/2012

Present from the FCC: Regina Brown, James Bachtel, Cara Voth, Rebecca Bina

Topics of Discussion:

1. Item 21 and Certification letters.

In part, we are seeking to inform FCC that SECA will be bringing issues to USAC regarding Item 21 Attachments. Applicants who submitted Item 21 Attachments via paper and email have been issued Urgent Reminder Letters stating that their Item 21 Attachments have not yet been received. Our concern centers around the process applicants should use applicants to verify if, in fact, Item 21 attachments have been submitted. Additionally, the Urgent Reminder Letters aren't addressed to contact person. This may cause additional difficulty in informing the appropriate personnel.

We also have some shared concerns that CSB is informing applicants who call regarding these letters that they (the applicants) should simply resend the item 21. Will this create problems if this is done in response to the letter?

We do have one question specifically for FCC. In July of 2011, SECA filed a Request for Review and Waiver on behalf applicants denied funding as a result of filing out-of-window Item 21 Attachments. What can you share with us with regard to the status of this request?

2. Audits

The definition of a gift under the E-rate rules does not mention political contributions to school board members. The FCC regulations governing gifts to federal executive employees (upon which the E-rate gift rules are based) do not address political contributions as gifts per se and neither does the E-rate definition of gift.

The USAC Schools and Libraries Program audit document request includes the following question:

Item 16 in the Schools and Libraries Program (SLP) Application and Contracting Process asks:

16) Have any service providers given, or offered, gifts or **political contributions to any district or school employees or Board members**? If yes, please provide a description of the gift, to whom it was offered/provided, when it was offered/provided, and its value.

We have several concerns:

--Where is the authority to include political contributions as part of the definition of E-rate gifts? There is nothing stated about this in FCC orders or the Federal regulations governing gifts to federal executive employees.

--How is this to be enforced? Candidates for school board may or may not have to file campaign finance reports that may or may not be available online? How can an E-rate beneficiary tell a prospective candidate that they are not permitted to accept a contribution from certain donors, and how is the list of donors (all E-rate vendors) supposed to be communicated to candidates?

--Isn't there a first amendment issue here that precludes E-rate from imposing this restriction on school board candidates and other political office holders?

--States have conflict of interest laws that may govern this conduct so isn't this rule unnecessary as well?

3. Eligibility of E-books

SECA has been following comments made by the Chairman regarding E-Books and we have a few questions regarding the direction of this discussion.

What exactly is the FCC definition of E-books? In the education industry, the definition of an electronic book is a book that is made available in a digital format. Q. Is this the same definition that the FCC is using when discussing E-books?

If so, it has always been understood that this program is a mechanism for funding connectivity. E-books seem to add content as an eligible service.

Is this the direction of the FCC?

4. Please comment on the white paper SECA submitted to the FCC on August 1, 2011, dealing with black hole and COMAD issues. Are any of these issues and recommendations on the table for the next broad NPRM?
 - a. To review, SECA was concerned with extensive delays in E-rate investigations regarding applicants and service providers, and with the long-term financial exposure of applicants to COMADs. The key problems observed include:
 - Inability of individual applicants to resolve longstanding issues while funding is delayed for multiple years.
 - Similar resolution issues for service providers impacting funding for all client applicants.
 - Financial exposure to 100% COMADs years after funds are disbursed.

- b. Recognizing statutory and administrative constraints, SECA suggested a series of procedural and/or rule changes, including:
 - A “Bill of Rights” for E-rate stakeholders.
 - Increased transparency of investigative status.
 - Expanded use of “Under Review” procedures.
 - Streamlining and validating Code 9 procedures.
 - Recovery of funds deadlines.
 - Finality of FCDL decisions for non-statutory violations.
 - Gradations of financial COMAD penalties.
5. There has been a recent effort by the FCC to make decisions on pending appeals. Will this continue at the same pace after Gina Spade has moved on to other duties?
6. What is the process for calculating E-rate discounts for current and new CEO participating schools for E-rate funding year 2013?
7. SPIN change restrictions, as the result of the 2010 Sixth Report and Order.
8. Determining eligibility for non-traditional schools should be left to the state’s interpretation and intent of their own state law. USAC over reaches in making this determination.
9. Funding situation for 2012 given the demand estimate. . . You don’t have enough money to fund 90% Priority 2. You are \$100 million dollars short for Priority 2. Below are options that, alone or combined, might work:
 - Skip P2 in 2012. Fund 2011 all. Then push forward to 2013 and meanwhile think of how to fund p2 in the future.
 - Consider cutting off P2 funding at 89% for 2011. The program will have money left over for 2012 P2.
 - Don’t make a final rollover in 2012. Hold money until enough in future quarters to fund 2012 p2. Rollover is not as much this year.
 - Moving excess funds from other mechanisms within USF...but we are reluctant to suggest this unless there is clear excess.
 - Push for Form 500 filings to recoup unused commitments. Right now Form 500s are optional. This would allow for recapture of these funds prior to the close of the invoicing window.
 - Don’t fund maintenance in 2012.

Ideas that we do NOT suggest:

- Proration is a messy idea. We wanted to let you know that we would rather that you don’t fund at all rather than prorate. This option would make the program more difficult for the applicant as well as the administrator.

- Funding 90% basic maintenance and not fund equipment. We think that is a bad idea. There is thought to do away with basic maintenance

This list is a 2012 Band-Aid. Where do we go from here? If we run out of money for P1 – where do we get the money? This is the time to make the point that we need reform. We suggest an NPRM so that stakeholders can comment.

10. There are questions we have proposed to the FCC and are awaiting guidance on.

Respectfully submitted by Valerie Oliver, Alaska E-rate Coordinator for Schools and Libraries on behalf of State E-rate Coordinator's Alliance (SECA).